



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/08222/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 31 January 2019

Decision & Reasons Promulgated  
On 12 February 2019

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

OLEKSANDR ZADRONZHNYI  
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms Patyna, instructed by Sterling Lawyers

For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

**DECISION MADE PURSUANT TO RULES 34, 39 & 40 (3) OF THE  
TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008**

1. The appellant appeals with permission against the decision of the First-tier Tribunal promulgated on 25 September 2018.
2. I am satisfied the Judge misdirected himself in law as to who bears the burden of proof and that was compounded by the reference to the Appellant not having rebutted the evidence of the Respondent. The Judge focused on whether the

marriage is subsisting and not on whether marriage is one of convenience, that is, a sham from the beginning. He failed to make any findings as to whether the marriage was one of convenience from the beginning which was for the SSHD prove, despite apparently having accepted that it was not when granting an initial residence card. For those two reasons alone, the errors were material to the outcome. Given the failure properly to evaluate all of the evidence, the matter needs to be remitted to be heard again by a different Judge.

3. Rule 40 (1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 provided that the Upper Tribunal may give a decision orally at a hearing which I did. Rule 40 (3) provides that the Upper Tribunal must provide written reasons for its decision with a decision notice unless the parties have consented to the Upper Tribunal not giving written reasons. I am satisfied that the parties have given such consent at the hearing.

### **Notice of Decision**

1. The decision of the First-tier Tribunal involved the making of an error of law and is set aside.
2. I remit the appeal to the First-tier Tribunal for a fresh hearing on all issues.

Signed

Date: 31 January 2019

A handwritten signature in black ink, appearing to read 'Jonathan Rintoul', written in a cursive style.

Upper Tribunal Judge Rintoul